HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.1043 of 2007

Dated:05.02.2007

Between:

Mandadapu Sivarama Krishnayya.

...Petitioner.

and

The Deputy Registrar of Co-operative Societies, Eluru. and another.

...Respondents

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ORDER:

The petitioner is an Ex-president of P.A.C.S., K.Gokavaram. In the course of enquiry, under Section 51 of the Andhra Pradesh Cooperative Societies Act, 1964 (for short "the Act"), conducted into the affairs of the society, it was pointed out that the petitioner and two other employees have misappropriated the funds of the society to a tune of Rs.11,11,536/-. On the basis of the report, proceedings were initiated under Section 60(1) of the Act by the 1st respondent. After issuing notice to the petitioner, the 1st respondent passed an order, dated 30.10.2006, holding that the petitioner and two other employees are liable to pay the amount of Rs.11,11,536/-, with accrued interest at Rs.17,00,961/-. The petitioner challenges the same.

According to the petitioner, he engaged an advocate soon after issuance of notice under Section 60(1) of the Act

by the 1st respondent and there is an active participation in the proceedings on several occasions. He contends that without information to him, his advocate reported no instructions and the same has resulted in an *ex parte* order against him.

In the counter-affidavit filed on behalf of respondents, it is stated that the prescribed procedure was meticulously followed in the proceedings. It is stated that the petitioner was not only issued notice of hearing from time to time, but also was supplied all the documents, which have bearing on the subject matter. It is ultimately contended that the impugned order does not warrant any interference.

Heard the learned counsel for the petitioner and the learned Government Pleader for Co-operation.

In the ordinary course, the petitioner has to work out his remedies by filing an appeal before the Co-operative Tribunal, if he is aggrieved by an order under Section 60(1) of the Act. A perusal of the order, particularly reference 3 thereof, discloses that the matter has undergone umpteen number of adjournments between 25.02.2006 and 22.08.2006. The record discloses that the petitioner entered appearance through his advocate. A copy of the Vakalat filed by his advocate is placed before this Court by the respondents. On the said Vakalat, an endorsement was made on 29.07.2006 to the effect that he has no instructions. The petitioner contends that he was not at all informed by his advocate about that stage.

When the record clearly discloses that the advocate

engaged by the petitioner reported no instructions, the 1st respondent ought to have either issued a fresh notice to the petitioner, or verified whether the advocate had issued notice to the petitioner, before reporting no instructions. No such steps were taken. On the other hand, the matter was adjourned on two subsequent dates. The net result is that there is absolutely no representation on behalf of the petitioner. Notwithstanding the service of notice on the petitioner, he stood denied of an opportunity to present his case before the 1st respondent.

On this short ground, the impugned order is set aside, only insofar as it relates to the petitioner, on condition that the petitioner deposits a sum of Rs.3,00,000/- to the credit of the P.A.C.S., K.Gokavaram, within four weeks from today. The petitioner is entitled to participate in the proceedings afresh, only on making the deposit of Rs.3,00,000/-. Such deposit shall be subject to the out come of the proceedings under Section 60(1) of the Act, against the petitioner. In case the amount is not deposited, within the time stipulated above, the impugned order shall remain intact and it shall be open to the respondents to enforce it.

The Writ Petition is allowed to the extent indicated above. There shall be no order as to costs.

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Dt.05.02.2007
L.NARASIMHA REDDY, J

GJ